

Message Text

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FM AMEMBASSY SANTIAGO

TO SECSTATE WASHDC 8324

C O N F I D E N T I A L SECTION 1 OF 2 SANTIAGO 2197

EO 11652: GDS

TAGS: CI, PINT, PINS

SUBJ: FAA SECTION 32: POLITICAL PRISONERS

REF: STATE 068545

1. SUMMARY. GOC'S PERCEPTION OF SEVERE INTERNAL SECURITY THREAT, FIRM CHILEAN LEGAL BASIS UPON WHICH ITS DETENTION POLICY IS BASED, DEFINITIONAL DIFFICULTIES, AND INDICATIONS THAT GOC SOMEWHAT MODIFYING ITS POSITIONS ON ISSUE MAKE FACILE GENERALIZATIONS AS TO WHETHER GOC IN FACT IMPRISONING ITS CITIZENS "FOR POLITICAL PURPOSES" IMPOSSIBLE. PRESIDENTIAL DECISION TO INVOKE FAA SECTION 32 WOULD BE COUNTERPRODUCTIVE AND ADVERSELY AFFECT U.S. NATIONAL INTERESTS. END SUMMARY.

2. IT IS CLEAR FROM EMBASSY'S REPORTING ON THE SITUATION OF PERSONS DETAINED BY THE GOC SINCE SEPT 11 THAT FACTUAL CIRCUMSTANCES IN CHILE REQUIRE A DETAILED EXAMINATION OF ISSUES RAISED BY SECTION 32. AS IS WELL KNOWN TO DEPT/AID, THE COUP D'ETAT OF SEPT 11 FOLLOWED A PERIOD OF UNPRECEDENTED POLITICAL POLARIZATION AND CIVIL STRIFE. THE JUNTA PERCEIVES A CONSIDERABLE AND CONTINUING ARMED-MARXIST THREAT TO THE NEW GOVT AS NECESSITATING A FORCEFUL PROGRAM OF INTERNAL SECURITY PROTECTION, DURING A PERIOD OF NATIONAL EMERGENCY.

3. TO FACILITATE SUCH A PROGRAM, THE JUNTA, BY DECREE LAW NO. 3

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(SEPT 11, 1973), DECLARED A "STATE OF SIEGE" -- PURSUANT TO

THE PROVISIONS OF ARTICLE 72, PARAGRAPH 17 OF THE CHILEAN CONSTITUTION -- UNDER WHICH THE GOC MAY DETAIN INDIVIDUALS WITHOUT CHARGES FOR THE DURATION OF THE CONDITION OF "INTERNAL UNREST" (CONMOCION). UNDER THESE EMERGENCY POWERS THE GOC HAS DETAINED THOUSANDS OF CHILEANS FOR INVESTIGATION OF SUSPECTED ILLEGAL ACTIVITY CONTRAVENING LAWS EXTANT AT THE TIME OF THE ALLEGED OFFENSE.

4. MANY OF THESE INDIVIDUALS HAVE BEEN CHARGED AND REMANDED FOR TRIAL BY MILITARY TRIBUNALS OR NORMAL CIVILIAN COURTS. MANY OTHERS HAVE BEEN RELEASED AFTER INVESTIGATION. A THIRD, SUBSTANTIAL GROUP OF PERSONS REMAINS IN DETENTION WITH NO FORMAL CHARGES YET PREFERRED. GOC CONTENTS THAT PERSONS SO DETAINED ARE BEING INVESTIGATED IN ORDER TO DETERMINE WHETHER THEY SHOULD BE BROUGHT TO TRIAL FOR SPECIFIC CRIMES. RESPONDING TO CHARGES OF "POLITICAL PRISONERS," THE GOC NOTES THAT THOUSANDS OF DETAINEES HAVE IN FACT BEEN RELEASED WHERE INVESTIGATION DID NOT REVEAL CRIMINAL ACTIVITY AND THAT MERE PARTICIPATION IN NOW PRESCRIBED POLITICAL PARTIES IS NOT CAUSE FOR DETENTION SINCE LARGE NUMBERS (HUNDREDS OF THOUSANDS) OF MARXISTS, SOME VERY PROMINENT, HAVE NEVER BEEN DETAINED.

5. THE CHILEAN SUPREME COURT, THE NATION'S HIGHEST JUDICIAL BODY, WHICH -- TOGETHER WITH THE LOWER COURTS AND THE CONTRALORIA GENERAL DE LA REPUBLICA -- RETAINS ITS AUTONOMOUS STATUS, HAS CONSISTENTLY RATIFIED THE LEGALITY OF DETENTION UNDER THE CIRCUMSTANCES DESCRIBED ABOVE BY REFUSING TO GRANT THE CHILEAN EQUIVALENT OF A WRIT OF HABEAS CORPUS (RECURSO DE AMPARO) ON GROUNDS THAT THE MATTER IS PROPERLY IN THE HANDS OF THE MILITARY AND THAT IT THEREFORE LACKS JURISDICTION. SUPPORTERS OF THE GOC NOTE THAT THE COURT'S POSITION IS BASED ON LONG-STANDING TRADITION AND THAT THE COURT HAS ADOPTED THE SAME POSITION IN PREVIOUS HISTORICAL CASES UNDER STATE OF SIEGE.

6. WHILE EARLY ACTIONS OF GOC AND UNOFFICIAL STATEMENTS PROVIDED CONSIDERABLE BASIS FOR CHARGES THAT THE GOVT WAS DENYING DEFENDANTS FAIR AND OPEN TRIALS, THE SITUATION AT PRESENT APPEARS TO BE AMELIORATING. AIR FORCE TRIALS WHICH BEGAN ON APRIL 17 ARE OPEN TO THE PRESS AND OBSERVERS. DEFENSE ATTORNEYS WERE GRANTED AMPLE TIME TO PREPARE CASES. IT APPEARS CONFIDENTIAL

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THAT THIS POLICY MAY BE CONTINUED IN FUTURE TRIALS. THE GOC ALSO ASSERTS THAT SOME INDIVIDUALS WILL BE TRIED IN CIVILIAN COURTS UNDER NORMAL CIVIL PROCEDURES WHERE THE CHARGES SO WARRANT.

7. GENERAL SITUATION DESCRIBED ABOVE WITH REGARD TO DETENTION, PREFERRING OF CHARGES, AND TRIALS EXISTS IN WHAT APPEARS TO BE AN ATMOSPHERE OF SOME MOVEMENT TOWARD MORE FULL COMPLIANCE

WITH INTERNATIONALLY ACCEPTED STANDARDS OF DUE PROCESS OF LAW. THOUGH MAJORITY OF CHILEAN LEGAL PROFESSION CONVINCED THAT GOVT AND COURTS ARE ACTING IN ACCORDANCE WITH CHILEAN TRADITION AND STATUTES, SOME OF MINORITY OF LAWYERS WHO ARE CRITICAL OF GOVT'S POSITION HAVE INFORMED EMBASSY THEY HAVE MADE KNOWN TO GOC THEIR DISSATISFACTION WITH CURRENT DETENTION POLICY AND SPECIFICALLY WITH REFUSAL OF COURTS TO GRANT HABEAS CORPUS REQUESTS. LAWYERS CONTEND THAT THEIR VIEWS ARE FINDING SOME RESONANCE AND THAT EVENTUAL MODIFICATION OF CURRENT PRACTICE IS POSSIBLE.

8. IN ADDITION TO INTERNATIONAL AND DOMESTIC CRITICISM IT SHOULD BE NOTED THAT EMBASSY IS OF OPINION THAT WHATEVER CHANGES HAVE COME ABOUT ARE, AT LEAST IN GOOD PART, THE RESULT OF PRIVATE REPRESENTATIONS ON THE PART OF USG IN MAKING KNOWN TO THE GOC OUR POSITION ON HUMAN RIGHTS. SPECIFICALLY, WE HAVE CALLED ATTENTION TO RESTRAINTS UPON OUR ABILITY TO BE AS FORTHCOMING WITH ASSISTANCE TO THE GOC AS POSSIBLE GIVEN STRONG PUBLIC OPPOSITION IN THE US, AND SPECIFICALLY IN THE CONGRESS, TO ACTIONS OF THE GOC IN RELATION TO HUMAN RIGHTS AND THE STATUS OF DETAINEES.

9. IT IS RELEVANT TO ASK WHY CHILE, A NATION CHARACTERIZED BY HIGH REGARD FOR DEMOCRATIC PRACTICES, HAS BEEN SUBJECTED TO EMERGENCY MEASURES NOW BEING FOLLOWED BY CHILEAN GOVERNMENT, AND TO EXAMINE THIS RATIONALE IN TERMS OF ITS BEARING ON USG INTERESTS.

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ACTION ARA-20

INFO OCT-01 ISO-00 AID-20 IGA-02 CIAE-00 DODE-00 PM-07

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TO SECSTATE WASHDC 8325

C O N F I D E N T I A L SECTION 2 OF 2 SANTIAGO 2197

10. UPSET OF ALLENDE REGIME ON SEPTEMBER 11, 1973 TOOK PLACE BECAUSE COUNTRY HAD SLID INTO ECONOMIC AND POLITICAL CHAOS, AND BECAUSE ECONOMIC STRINGENCY AND GENERAL DISORGANIZATION WERE SUCH THAT SOME RADICAL REVERSAL WAS URGENTLY REQUIRED. THERE IS EVIDENCE THAT IN ABSENCE OTHER DEVELOPMENTS EXTREME LEFTISTS IN PRESIDENT ALLENDE'S POPULAR UNITY COALITION WOULD HAVE ATTEMPTED TO SEIZE POWER AND ESTABLISH A LEFTIST DICTATORSHIP, OR AT LEAST TO PROJECT A DESTRUCTIVE CIVIL WAR. BEFORE THIS COULD HAPPEN, HOWEVER, CHILEAN ARMED FORCES, DEPARTING FROM THEIR TRADITIONAL NON-POLITICAL STANCE, TOOK CONTROL, NOT AGAINST POPULAR DESIRES BUT AS RESPONSE TO WHAT ALL OBSERVERS AGREE WAS OVERWHELMING PUBLIC DEMAND. THERE SEEMS TO BE NO DOUBT THAT 80-90 PC OF THE CHILEAN PEOPLE SUPPORTED THE SEPTEMBER 11 COUP, AND THAT A MAJORITY OF CHILEAN PEOPLE STILL SUPPORT THE JUNTA.

11. WHILE MILITARY TAKEOVER WAS COMPLETE, ELEMENTS OF LEFTIST OPPOSITION STILL EXIST IN COUNTRY. CHILEAN LEFTISTS WHO SUCCEEDED IN LEAVING COUNTRY HAVE ORGANIZED ASSISTANCE GROUPS IN MANY OTHER COUNTRIES OPENLY DEVOTED TO AIDING THOSE INSIDE CHILE TO OVERTHROW JUNTA BY VIOLENCE. JUNTA, FOR ITS PART, SEES ITSELF AS THREATENED BY A CONSPIRACY -- WITH, WE MUST AGREE, CONSIDERABLE JUSTIFICATION. JUNTA BELIEVES THERE IS A CONTINUING INTERNAL SECURITY THREAT, AND FEARS THAT THE ARMS CLANDESTINELY IMPORTED DURING THE ALLENDE YEARS AND WHICH MAY STILL BE ARRIVING WILL BE USED IN A CONCERTED ANTI-CONFIDENTIAL

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GOVERNMENT TERRORIST CAMPAIGN.

12. GOC LEADERS ARE BEWILDERED AND FRUSTRATED BY WHAT THEY FEEL TO BE LACK OF COMPREHENSION AND APPRECIATION IN COUNTRIES LIKE U.S. OF SERVICE THEY RENDERED U.S. AND HEMISPHERE STRATEGIC INTERESTS BY FREEING CHILE OF MARXIST CONTROL. JUNTA EXPLAINS ITS INTERNAL SECURITY MEASURES AS MOTIVATED ONLY BY INTERNAL SECURITY THREAT, AND ASSERTS THAT WHEN IT IS OVERCOME, AND WHEN IT IS CLEAR THAT POLITICAL POLARIZATION WHICH PRODUCED CHAOS IN CHILE WILL NOT RECUR, ARMED FORCES INTEND TO END STATE OF EMERGENCY AND MOVE TOWARD RESTORATION OF DEMOCRATIC PRACTICES IN CHILE.

13. IN THESE CIRCUMSTANCES, WE MUST ASK OURSELVES WHAT POLICY WITH REGARD TO AID TO CHILE WILL BEST SERVE U.S. NATIONAL INTERESTS. AT PRESENT, IN SPITE OF WHAT CHILEANS REGARD AS LACK OF U.S. UNDERSTANDING OF THEIR PERIL, WE HAVE MANAGED TO MAINTAIN OUR STATUS AS A HELPFUL FRIEND WHOSE COUNSEL DESERVES CONSIDERATION. AS LONG AS WE CAN RETAIN THIS POSTURE WE SHOULD BE ABLE TO CONTINUE TO EXERT CONSIDERABLE LEVERAGE ON CHILEANS TO BRING THEIR PERFORMANCE ON HUMAN RIGHTS CLOSER

TO INTERNATIONALLY ACCEPTED STANDARDS AS REGIME CONTINUES
TO CONSOLIDATE ITS POSITION.

14. IF, PURSUANT TO SECTION 32, USG SHOULD NOW DENY ECONOMIC
AND MILITARY ASSISTANCE TO CHILE, REACTION WOULD BE IMMEDIATE,
SHARP AND BITTER. OUR BILATERAL RELATIONSHIP WOULD BE FIRST
VICTIM, TO DETRIMENT OUR ABILITY PROMOTE AND PROTECT U.S.
INTERESTS. FEELING MORE INSECURE, JUNTA WOULD HAVE NO RECOURSE
BUT TO TIGHTEN INTERNAL SCREWS STILL FURTHER; CUT OFF FROM U.S.
ASSISTANCE, CHILEAN ECONOMIC RECOVERY, DIFFICULT ENOUGH AT
BEST, WOULD BE EVEN HARDER TO ATTAIN. PERPETUATION OF MILITARY
WEAKNESS VIS-A-VIS PERU WOULD ADD TO SENSE OF RESENTMENT AND
INCREASE DANGER OF IRRATIONAL ACTION. NET RESULT WOULD BE
CREATION OF A SIEGE MENTALITY HERE, ALIENATION OF THE
MILITARY (CURRENTLY THE MOST IMPORTANT POLICE FORCE IN THE
COUNTRY), AND FEWER BADLY NEEDED RESOURCES TO RELIEVE EXTREME
ECONOMIC STRINGENCY. CONSEQUENCES WOULD BE BOUND TO WORK TO
OUR DETRIMENT.

15. ALL THESE FACTORS, IT SEEMS TO US, SHOULD BE TAKEN INTO
ACCOUNT IN DETERMINING WHETHER TO DENY ECONOMIC AND MILITARY
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ASSISTANCE ON BASIS OF SECTION 32 OF FAA. WE SUGGEST THAT
TEMPORARY NATURE OF EMERGENCY MEASURES, TREND TOWARD
MODERATION OF RESTRICTIVE PRACTICES, AND DESIRABILITY OF
RETAINING U.S. INFLUENCE TO ENCOURAGE CHILEANS TO RETURN TO
THEIR TRADITIONAL DEMOCRATIC WAYS, ALL CREATE STRONG
PRESUMPTION THAT IT IS IN OUR NATIONAL INTEREST TO CONTINUE
U.S. ASSISTANCE.
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